

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re:)
)
SUSAN LANGLEY TESSENEER,) Case No. 19-11283
)
Debtor.)

ORDER SUSTAINING OBJECTION TO CONFIRMATION AND
ORDERING DEBTOR TO FILE AMENDED PLAN WITHIN 14 DAYS

This case is before the court on TitleMax of Alabama’s objection to confirmation (doc. 17). The parties have fully briefed the objection.¹ The court also heard oral argument on August 29, 2019 and admitted Titlemax’s exhibit 1 into evidence without objection. For the reasons discussed below, the court sustains TitleMax’s objection to confirmation.

Background

The debtor pawned the title to her 2012 Hyundai Tucson with TitleMax on April 10, 2019. The debtor’s contract with TitleMax matured on May 10, 2019 (*see* TitleMax ex. 1), but she has never made the payment due to TitleMax. Instead, the debtor filed for chapter 13 bankruptcy on April 18, 2019 and proposed to pay the debt to TitleMax over the life of her chapter 13 plan.

TitleMax objects that the plan “impermissibly tries to convert [the debtor’s] obligation to redeem the vehicle into a debt she can pay through” the plan. (*See* obj., doc. 17, ¶9). TitleMax argues that the redemption period has run and that in accordance with Alabama law and the

¹ By agreement of the parties and to avoid duplicate briefing, the court has also reviewed the briefing filed in *In re Porras*, case no. 19-10708.

Eleventh Circuit’s opinion in *In re Northington*, 876 F.3d 1302 (11th Cir. 2017), TitleMax now owns the car and the car is no longer part of the bankruptcy estate.

Analysis

The parties agree that the Alabama Pawnshop Act applies to the transaction here and that the court must look to state law to see what rights, if any, the debtor has in relation to the 2012 Hyundai Tucson. *See In re Northington*, 876 F.3d at 1310 (“Even in the uniquely federal bankruptcy context, property interests are created and defined by state law.”) (citation, quotation marks, and brackets omitted). The Pawnshop Act defines a “pawn transaction” as “[a]ny loan on the security of pledged goods or any purchase of pledged goods on condition that the pledged goods are left with the pawnbroker and may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.” Ala. Code § 5-19A-2(3).² “Pledged goods not redeemed on or before the [pawn’s] maturity date . . . shall be held by the pawnbroker for 30 days following that date and may be redeemed . . . within the period by the payment of the originally agreed redemption price” and “an additional pawnshop charge” Ala. Code § 5-19A-10(b). “Pledged goods not redeemed within 30 days following the originally fixed maturity date shall be forfeited to the pawnbroker and absolute right, title, and interest in and to the goods shall vest in the pawnbroker.” Ala. Code § 5-19A-6.

² Money-lending transactions involving the transfer of motor vehicle certificates of title for the purpose of giving security are “pawn transactions” subject to the Pawnshop Act, even when the pledgor retains possession of the car, as in this case. *See Floyd v. Title Exch. & Pawn of Anniston, Inc.*, 620 So. 2d 576, 577-79 (Ala. 1993); *Blackmon v. Downey*, 624 So. 2d 1374, 1376 (Ala. 1993); *In re Jones*, 544 B.R. 692, 697, 701 (Bankr. M.D. Ala. 2016). In this respect, “redeem” in the title pawn context is slightly different than in the post-repossession context, *i.e.*, a person can retain possession of a car but still be required to redeem it under the Pawnshop Act.

In *In re Northington*, the Eleventh Circuit held that when the time to redeem a pawned car under the applicable state law lapses, the debtor's rights in the car are "immediately forfeited, extinguished, and vested in" the pawnbroker. *See* 876 F.3d at 1315. Here, under her April 10, 2019 contract with TitleMax, the debtor had until May 10, 2019 to redeem her car. She then had an additional 30 days under the Pawnshop Act. Her bankruptcy filing on April 18, 2019 extended the redemption period 60 days from the filing, until June 17, 2019, but she did not redeem by that date. *See* 11 U.S.C. § 108(b); *In re Northington*, 876 F.3d at 1306.

The debtor argues that the holding in *In re Northington* does not apply to her case because the contract maturity date was never reached since she filed for bankruptcy during the first 30 days before the maturity date of May 10, 2019, instead of during the second 30 days provided for by Alabama Code § 5-19A-6. She contends that because she still had title and possession when she filed for bankruptcy in the first 30 days, she did not lose title and possession within the second 30 days or thereafter. According to her, due to the bankruptcy filing, she has a right to continued possession of the car, subject only to a lien by TitleMax under Alabama Code § 5-19A-10(a). She thus argues that she can modify TitleMax's rights in the car and cure any default pursuant to 11 U.S.C. § 1322(b)(2) and (3).

Alabama Code § 5-19A-10(b) contemplates "redemption" within the first 30-day period prior to the maturity date and, afterwards, within the second 30-day grace period created by the Pawnshop Act. But even if there were a difference between filing for bankruptcy within the first 30 days instead of the second 30 days, the clock keeps ticking under the Pawnshop Act; the redemption period is not frozen in time by the filing of the bankruptcy and the maturity date is reached.

Under 11 U.S.C. § 541, property of the estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case.” However, as recognized by the Eleventh Circuit in *In re Northington*, § 541 “neither clearly says nor unambiguously implies that a bankruptcy estate, once created, necessarily remains static.” *See* 876 F.3d at 1314 (citation omitted). The bankruptcy estate “can, in certain circumstances, expand or contract in accordance with the operation of underlying state-law property rules.” *See id.* One such circumstance is when an asset “evaporates” automatically by “the ordinary operation of state law.” *See id.* at 1313-15. The Eleventh Circuit therefore held that when the debtor’s redemption period lapsed under state law, the debtor lost any rights in the car at issue and those rights were vested in TitleMax, *i.e.*, any rights – whatever those may have been at the time of the filing of the bankruptcy – dropped out of the estate entirely. *See id.* at 1314-15.

The Eleventh Circuit’s opinion in *In re Lewis*, 137 F.3d 1280 (11th Cir. 1998), which did not address title pawns at all, does not change this analysis.³ The Eleventh Circuit there discussed Alabama’s common law of conversion; it did not alter Alabama statutory law, the Pawnshop Act, which explicitly provides that all rights, including any right to possess, pass to the pawnbroker if pledged goods are not timely redeemed. *See* Ala. Code § 5-19A-6 (“*absolute* right, title, and interest in and to the goods shall vest in the pawnbroker”) (emphasis added).

The Eleventh Circuit agrees with the debtor’s position to a point: a debtor can have a simultaneous “right to possess [a car] as well as a right to redeem it during the statutory period.” *See In re Northington*, 876 F.3d at 1315; *see also id.* at 1309-10. Nevertheless, accepting the argument that all TitleMax had on April 18, 2019 when the debtor filed for bankruptcy was a

³ The Eleventh Circuit cited *In re Lewis* in its *In re Northington* opinion. If that court had wanted to apply *In re Lewis* as the debtor suggests, it was certainly aware of that opinion and could have done so.

security interest in the car, at least in the pawn context, the Eleventh Circuit has also made clear that the bankruptcy did not stop the time from running beyond the 60-day extension of the redemption period to June 17, 2019. Whether or not the debtor had a right to possess the car when she filed for bankruptcy, when she failed to redeem the car by June 17, 2019, the car “ceased to be property of the bankruptcy estate” and TitleMax does not have a mere claim in the debtor’s bankruptcy, it has a 2012 Hyundai Tucson. *See id.* at 1315.

While § 1322(b) allows a chapter 13 plan to modify rights of secured creditors and provide for curing of any default related to a debtor’s contractual rights, it does not give the bankruptcy court the power to modify state law. *See id.* at 1313 (the Bankruptcy Code does not prevent assets “from evaporating on their own—as here, ‘automatically’—pursuant to the ordinary operation of state law”). The problem for debtors in Alabama (and Georgia, as in *In re Northington*) is that the state title pawn statute does not require any additional action by a pawnbroker once the redemption period has run. If the statute did, the result would likely be different because the automatic stay of 11 U.S.C. § 362 would prevent the pawnbroker from taking such action. *See generally In re Sorensen*, 586 B.R. 327 (B.A.P. 9th Cir. 2018). But under current Alabama law and Eleventh Circuit precedent, the court must hold in this case that the debtor no longer has any “rights in the car, possessory or otherwise” and cannot redeem the car through her chapter 13 plan. *See In re Northington*, 876 F.3d at 1315; *see also In re Thorpe*, No. 18-20082, 2019 WL 1785303, at *3 (Bankr. S.D. Ga. Mar. 29, 2019).

Conclusion

To the extent the court has not specifically addressed any of the parties’ arguments, it has considered them and determined that they would not alter the result. The court sustains TitleMax’s objection to confirmation (doc. 17) and finds that the 2012 Hyundai Tucson is not

property of the debtor's bankruptcy estate and is not subject to modification in the debtor's chapter 13 plan. The court thus denies confirmation and orders the debtor to file an amended plan within 14 days of the date of this order removing the subject vehicle from the plan.

Because the court has found that the car is not property of the estate, relief from stay is not necessary. However, TitleMax may submit a proposed order to the court granting its motion for relief from stay (doc. 26), if it would like to do so, within 7 days of the date of this order.

Dated: October 2, 2019


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE